

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7048

Joint Petition of RCC Atlantic Long Distance, Inc. and)
National Mobile Communications Corporation, d/b/a)
SoVerNet Communications, for Approval of Transfer)
of Assets)

Order entered: 4/29/2005

I. INTRODUCTION

On February 22, 2005, RCC Atlantic Long Distance, Inc. (herein "RCC-LD") and National Mobile Communications Corporation, d/b/a SoVerNet Communications (herein "NMC," collectively with RCC-LD, the "Petitioners"), jointly filed a petition ("Joint Petition") and a Telecommunications Merger and/or Acquisition Request for Approval Form requesting approval from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. § 109, for the sale of substantially all of the assets of RCC-LD to NMC. RCC-LD further requested that the Board revoke, pursuant to 30 V.S.A. § 231(b), RCC-LD's Certificate of Public Good ("CPG"), issued in Docket No. 6072 by Order of May 20, 1998, to provide intraLATA long-distance, wireline-telecommunications services in Vermont.

On March 21, 2005, the Vermont Department of Public Service (the "Department") filed a letter with the Board recommending that the Board approve the transactions described in the Joint Petition, without hearing, subject to the conditions that Board approval should not be effective until 30 days after NMC has provided the notices required by 47 C.F.R. § 64.1120(e) (for the transfer of customers from another telecommunications service provider without obtaining each subscriber's individual authorization and verification) and submission of such notice to the Department and the Board.

On March 31, 2004, Petitioners filed a draft Proposal for Decision. The Petitioners and the Department also waived their right to comment on the Proposal for Decision pursuant to 3 V.S.A. § 811.

I have reviewed the Joint Petition and the accompanying documents and agree that approval should be granted without hearing or further investigation.

II. FINDINGS OF FACT

Based upon the evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. RCC-LD is a Minnesota corporation transacting business in Vermont. It provides certain intraLATA long-distance, wireline-telecommunications services in Vermont within the meaning of 30 V.S.A. § 203(5) pursuant to a CPG issued by the Board on May 20, 1998, in Docket No. 6072, and owns and operates public-service property in connection therewith within the meaning of 30 V.S.A. § 201 as to make it subject to the Board's jurisdiction. Pet. at 1.

2. NMC is a Massachusetts corporation that does business in Vermont under the tradename SoVerNet Communications. It is authorized by the Board to provide facilities-based and resold telecommunications services in Vermont, including service at the local exchange, pursuant to CPG No. 527-CR, issued on January 5, 2000. Pet. at 1.

3. RCC-LD and NMC are parties to an Asset Purchase Agreement dated February 11, 2005, whereby RCC-LD will sell substantially all of its assets in Vermont to NMC contingent upon receiving all necessary regulatory approvals. Pet. at 2; Attachment 1 to Exh. A to Pet.

4. RCC-LD will cease operations in Vermont upon the transfer of its assets to NMC. Pet. at 2.

5. Upon consummation of this transaction, NMC will be the entity providing intraLATA long-distance, wireline-telecommunications service to the former RCC-LD customers that elect to subscribe to NMC. Pet. at 2.

6. The customers of RCC-LD have been notified of the transaction and informed that NMC will be responsible for any carrier change charges associated with this transfer and that they will be transferred to NMC, unless they select a different carrier by April 27, 2005. Pet. at 2; letter from Tom Lyons to Susan M. Hudson of 3/24/05 and attachments.

7. NMC provided notice to RCC-LD customers, pursuant to 47 C.F.R. § 64.1120(e), by letter dated March 25, 2005; a copy of such notice was provided to the Department and the Board

by letter dated March 24, 2005. Letter from Tom Lyons to Susan M. Hudson of 3/24/05 and attachments.

8. No changes to the rates and services offered to former RCC-LD customers are contemplated. Pet. at 2.

9. The combination of the services of RCC-LD and NMC will create economies of scale that will result in greater operating efficiencies. Pet. at 3.

10. The transition of RCC-LD's long-distance customers to NMC fits within NMC's business model, which is focused on delivering long-distance services to Vermonters, and will allow RCC-LD's parent and affiliates to focus on providing cellular telephone service and building a reliable network for its cellular customers in Vermont. Pet. at 3.

11. The transaction will allow NMC to strengthen its position in the Vermont telecommunications marketplace and thereby strengthen competition for telecommunications services. Pet. at 3.

III. DISCUSSION

The transfer or sale of assets requires approval by the Board under 30 V.S.A. § 109. The statute conditions approval upon a finding that the sale of assets will promote the public good (30 V.S.A. § 109). That standard is met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not make a sale . . . in any one calendar year constituting ten percent or more of the company's property located within this state . . . nor merge nor consolidate . . ." without approval of the Board.

After reviewing the Joint Petition, I conclude that 30 V.S.A. § 109 applies to the sale of assets of RCC-LD, which is a certificated telecommunications carrier in Vermont, to NMC. I further conclude that the transfer of assets will not cause undue inconvenience for Vermont customers and will allow RCC-LD's former customers to continue uninterrupted service. In addition, the sale of assets should result in greater operating efficiency for NMC, thus enhancing the ability of NMC to offer competitively priced services in the Vermont telecommunications marketplace. The sale of assets, therefore, will promote the public good. For all of these reasons, I conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 109

and should be approved.

RCC-LD has also requested that the Board revoke its CPG, in that RCC-LD will, as a result of the transfer of assets, no longer operate in Vermont. No opposition to this request has been raised. I find the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads me to conclude that RCC-LD's CPG should be revoked.

IV. CONCLUSIONS

The transfer of assets of RCC-LD to NMC, and the subsequent revocation of RCC-LD's CPG to provide telecommunications services, should be approved because the transaction will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. § 109. Therefore, I recommend that the Board approve the transfer of assets and related transactions.

All parties to this proceeding have waived their rights to comment on the Proposal for Decision in accordance with 3 V.S.A. § 811.

DATED at Montpelier, Vermont, this 29th day of April, 2005.

s/Gregg Faber
Gregg Faber
Hearing Officer

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Findings, Conclusion and recommendation of the Hearing Officer are adopted.
2. The transfer of assets of RCC Atlantic Long Distance, Inc., to National Mobile Communications Corporation, d/b/a SoVerNet Communications, will promote the public good and, therefore, is approved.
3. Effective upon the completion of the sale of assets of RCC Atlantic Long Distance, Inc., to National Mobile Communications Corporation, d/b/a SoVerNet Communications, the Certificate of Public Good issued to RCC Atlantic Long Distance, Inc., on May 20, 1998, in Docket No. 6072, is revoked.
4. Petitioners shall file a letter notifying the Board of the completion of the proposed transaction within one week of such completion.
5. National Mobile Communications Corporation, d/b/a SoVerNet Communications, shall file any revisions to its tariff necessary to include the existing service offerings of RCC Atlantic Long Distance, Inc., within thirty days of the completion of the transaction.
6. A Certificate of Consent to the sale of assets of RCC Atlantic Long Distance, Inc. to National Mobile Communications Corporation, d/b/a SoVerNet Communications, shall be issued.

DATED at Montpelier, Vermont, this 29th day of April, 2005.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: April 29, 2005

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.